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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA

FILED

FEB 01 2007

In the Matter of the Appeal of  
**SPORTSMOBILE WEST, INC.,**

Appellant,

From the Decisions of the

**STATE COMPENSATION INSURANCE FUND and  
WORKERS' COMPENSATION INSURANCE  
RATING BUREAU,**

Respondents.

ADMINISTRATIVE HEARING BUREAU

FILE AHB-WCA-06-7

**SUMMARY DENIAL OF APPEAL**

**Introduction**

Appellant Sportsmobile West, Inc. ("Sportsmobile West" or "Appellant") appeals separate decisions of the California Workers' Compensation Insurance Rating Bureau ("WCIRB")<sup>1</sup> and State Compensation Insurance Fund ("SCIF") pursuant to California

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<sup>1</sup> The WCIRB is a rating organization licensed by the Insurance Commissioner under Cal. Ins. Code section 11750, et seq., to assist the Commissioner in the development and administration of workers' compensation insurance classification and rating systems. The WCIRB serves as the Commissioner's designated statistical agent for the purpose of gathering and compiling experience data developed under California workers' compensation and employers' liability insurance policies. (Cal. Ins. Code, § 11751.5.)

Insurance Code section 11753.1 subsection (a).<sup>2</sup> Sportsmobile West argues that SCIF charged the appellant unfairly discriminatory rates for workers' compensation policies effective August 1, 2001, August 1, 2002, and August 1, 2003.

In addition, Sportsmobile West appeals the WCIRB's denial of appellant's request for the identities of all employers assigned to classification code 8390 ("Automobile Van Conversion or Customizing – all operations") pursuant to California Insurance Code section 11752.6.

The appeal of Sportsmobile West is summarily denied pursuant to Insurance Code section 11737, subdivision (f), and California Code of Regulations, title 10, section 2509.53, subdivision (e)<sup>3</sup>, for the reasons discussed below.

#### **Issue Statement**

- (1) Was Sportsmobile West's appeal of the WCIRB's December 28, 2005 decision filed timely?
- (2) Was Sportsmobile West's appeal of SCIF's decision filed timely?
- (3) Is Sportsmobile West's appeal within the Commissioner's jurisdiction?

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<sup>2</sup> Cal. Ins. Code § 11753.1 subdiv. (a) authorizes any person aggrieved by a rating organization's decision to appeal the decision to the Insurance Commissioner.

<sup>3</sup> California Code of Regulations, title 10, section 2509.53, subdivision (e) states as follows: "The Commissioner may deny an appeal without a hearing if he or she has information on the subject from which the appeal is taken and he or she believes that a reasonable basis for the appeal does not exist or that the appeal is not made in good faith. The denial shall be in writing and shall set forth the basis for the denial and shall be served on all parties."

## Contentions of the Parties

Sportsmobile West contends that SCIF applied discriminatory rates to appellant's workers' compensation insurance policies effective August 1, 2001, August 1, 2002 and August 1, 2003.<sup>4</sup> Specifically, appellant contends that the rates SCIF applied to appellant's policies under classification code 8390 ("Automobile Van Conversion or Customizing – all operations") were unfairly discriminatory because SCIF's rates for classification code 8390 were based on improperly calculated pure premium rates.<sup>5</sup> It contends that these pure premium rates were incorrect because: (1) SCIF routinely reports excessive reserves to the WCIRB; and (2) the WCIRB mistakenly assigned some employers into classification code 8390 ("Automobile Van Conversion or Customizing – all operations"), and their inclusion distorts the calculation of pure premium rates for that classification.<sup>6</sup> In addition, Sportsmobile West contends that it is entitled to the identities of all companies assigned to classification code 8390 from the WCIRB under California Insurance Code section 11752.6.<sup>7</sup>

SCIF contends that: (1) the matter is not properly within the jurisdiction of the Commissioner, as the present matter is essentially a contract dispute not subject to the Commissioner's jurisdiction<sup>8</sup>; (2) Sportsmobile West failed to timely file a Complaint and Request for Action on SCIF regarding its dispute as required under the provisions of the California Worker's Compensation Experience Rating Plan – 1995 ("ERP"), and

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<sup>4</sup> Appellant's Opening Brief, pp. 1-2.

<sup>5</sup> Appellant's Opening Brief, p. 2.

<sup>6</sup> Appellant's Opening Brief, pp. 2, 4.

<sup>7</sup> Appellant's Opening Brief, pp. 4-6.

<sup>8</sup> SCIF's Response Brief, pp. 4-6.

hence Sportsmobile's appeal to the Commissioner must be considered untimely<sup>9</sup>; and (3) the appellant failed to produce any evidence that SCIF charged the appellant unfairly discriminatory rates or in any way violated Insurance Code section 11732.5.<sup>10</sup>

The WCIRB contends that: (1) the present matter is not properly within the jurisdiction of the Commissioner, as the Commissioner must apply, in his adjudicatory capacity, the regulations which he promulgates in his quasi-legislative capacity;<sup>11</sup> (2) Sportsmobile West's Complaint and Request for Action was not timely submitted to the WCIRB pursuant to the provisions of the California Worker's Compensation Uniform Statistical Reporting Plan - 1995 ("USRP"), and hence the appeal itself must be considered untimely;<sup>12</sup> and (3) the WCIRB it is not required to provide the materials requested by the appellant because Sportsmobile West misinterprets the scope of California Insurance Code section 11752.6.<sup>13</sup>

### **Procedural History**

Sportsmobile West filed the present appeal on January 31, 2006, challenging decisions of both SCIF and the WCIRB. A telephonic status conference held on May 31,

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<sup>9</sup> SCIF's Response Brief, pp. 7 - 9. The ERP is approved by the Commissioner under a grant of legislative authority. (Cal. Ins. Code, § 11734 subdiv. (a); Cal. Code Regs., tit. 10, § 2318.6.) The rules of the ERP are mandatory. As part of the California Code of Regulations, they have the same force and effect as statutes. (Cal. Code of Regs., tit. 10, § 2350; *Yamaha Corp. v. State Bd. of Equalization* (1998) 19 Cal. 4th 1, 10.)

<sup>10</sup> SCIF's Response Brief, pp. 6-7. With respect to the contract dispute, SCIF contends that on or about April 20, 2005, it entered into an agreement with the appellant for the payment of premium under an installment plan for appellant's 2003 workers' compensation insurance policy. The appellant stopped making payments under the terms of the agreement prior to filing its appeal, claiming it was due a refund on the 2003 policy year because the pure premium rate component of SCIF's rate for classification 3890 was discriminatory. SCIF correctly argues that the Commissioner does not have jurisdiction to decide the rights and duties of parties to a contract. However, since the Commissioner finds that jurisdiction does not exist based on other grounds, the arguments presented by counsel that relate to the April 20, 2005, agreement need not be addressed further here.

<sup>11</sup> WCIRB's Brief Re Jurisdiction and Timeliness, pp. 4-6.

<sup>12</sup> WCIRB's Brief Re Jurisdiction and Timeliness, pp.12-18.

<sup>13</sup> WCIRB's Brief Re Jurisdiction and Timeliness, pp.9-12, 19.

2006, before Administrative Law Judge ("ALJ") Kolakowski. The WCIRB and SCIF raised threshold challenges to: (1) the timeliness of the appeal, given the filing dates of the original Complaint and Requests for Action; and (2) the Commissioner's jurisdiction to hear the case. These issues were set for briefing in an *Order Following Telephonic Status Conference* dated May 31, 2006 ("May 31, 2006 Order").<sup>14</sup> Following receipt of all briefs, ALJ Kolakowski issued an *Order Requesting Evidence* on September 7, 2006. Sportsmobile West replied by filing a *Response to Order Requesting Evidence* on September 14, 2006. ALJ Kolakowski issued an *Order Admitting Evidence and Closing the Record* on October 2, 2006.<sup>15</sup>

### FINDINGS OF FACT

The findings of fact are as follows:

1. Sportsmobile West was insured by SCIF under the following workers' compensation insurance policies during the periods at issue:
  - Policy No. 1645842-01, effective August 1, 2001 to August 1, 2002
  - Policy No. 1645842-02, effective August 1, 2002 to August 1, 2003
  - Policy No. 1645842-03, effective August 1, 2003 to August 1, 2004<sup>16</sup>
2. On August 24, 2005, Sportsmobile West served a Complaint and Request for Action on SCIF ("SCIF CRA").<sup>17</sup> The SCIF CRA objected to the high cost of premiums for the policy years since 2000 and challenged SCIF's use of the WCIRB's classification relativity sheets in determining SCIF's insurance premiums rates.

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<sup>14</sup> Appellant's substantive contentions were not included in the issues set for briefing in the May 31, 2006 Order, as those disputes would be rendered moot if the objections raised by SCIF and the WCIRB were upheld.

<sup>15</sup> By order of October 2, 2006, the following exhibits were admitted into evidence: Sportsmobile West's Exhibits A-T; SCIF's Exhibits 1-30; and WCIRB's Exhibits A-L.

<sup>16</sup> Appellant's Exhibits S and T.

<sup>17</sup> Appellant's Exhibit A.

3. Sportsmobile West served a Complaint and Request for Action dated August 24, 2005 on the WCIRB ("WCIRB CRA").<sup>18</sup> The WCIRB CRA requested the names of other employers assigned to classification code 8390, pursuant to California Insurance Code section 11752.6. The WCIRB CRA also claimed that Sportsmobile West had discovered a potential problem with the WCIRB's formula used to determine insurance rates.

4. SCIF served its decision on Sportsmobile's Complaint and Request for Action by letter dated November 7, 2005. SCIF determined that its base rates were appropriate, and deferred to the WCIRB on the other issues raised in the SCIF CRA. No reference was made to the timeliness of the SCIF CRA. SCIF's decision contained a notice of appellant's rights to appeal.<sup>19</sup>

5. The WCIRB acknowledged receipt of Sportsmobile's Complaint and Request for Action by letter dated September 22, 2005. The WCIRB subsequently issued its decision letter denying the complaint on November 11, 2005. The WCIRB denied Sportsmobile West's request for the names of other employers assigned to classification code 8390 made pursuant to California Insurance Code section 11752.6, on the basis of confidentiality of those third parties. No reference was made to the timeliness of the WCIRB CRA. The WCIRB's decision contained a notice of appellant's rights to appeal.<sup>20</sup>

6. By letters dated December 2, 2005, Sportsmobile West sought reconsideration of the WCIRB's and SCIF's decisions.<sup>21</sup>

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<sup>18</sup> Appellant's Exhibit B.

<sup>19</sup> Appellant's Exhibit E.

<sup>20</sup> Appellant's Exhibits D and E.

<sup>21</sup> Appellant's Exhibits E and F.

7 The WCIRB denied Sportsmobile's request for reconsideration on December 28, 2005. The WCIRB decision reiterated the positions taken in the WCIRB's November 11, 2005 decision, and did not address the timeliness issue.<sup>22</sup>

8. On December 30, 2005, SCIF acknowledged receipt of Sportsmobile West's request for reconsideration but did not issue a decision on the request prior to the initiation of this appeal.<sup>23</sup>

9. On January 31, 2006, Sportsmobile mailed its appeal of the WCIRB's decision on reconsideration and SCIF's denial of its request for reconsideration by operation of law. The appeal was received by the Department of Insurance on February 6, 2006.

10. SCIF's rate filings effective January 1, 2001, January 1, 2002, January 1, 2003 and January 1, 2004 were based, in part, on the pure premium rates adopted by the Insurance Commissioner for each of those years.<sup>24</sup>

## DISCUSSION

### A. Appellant Failed to Timely Appeal the WCIRB's December 28, 2005 Decision

Appeals to the Commissioner from a written decision of the WCIRB must be filed within thirty days after service of a decision on a request for reconsideration.<sup>25</sup> Filing is defined as receipt by the Department of Insurance of the appeal.<sup>26</sup> Here, the WCIRB

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<sup>22</sup> Appellant's Exhibit I.

<sup>23</sup> Appellant's Exhibit G.

<sup>24</sup> SCIF's Exhibits 2-8.

<sup>25</sup> Cal. Code of Regs., tit. 10, § 2509.46. Cal. Code of Regs., tit. 10, § 2509.49 provides for a five day extension of time after service of a copy of the appeal for "any right to do any act or make any response within any prescribed period." This section does not provide an extension of time for the initial filing of the appeal itself. Rather, it provides such an extension for responses to served copies of the appeal. However, that issue is moot, as the appeal was filed more than five days late.

<sup>26</sup> Cal. Code of Regs., tit. 10, § 2509.42 (h).

issued its decision on reconsideration on December 28, 2005. Sportsmobile West filed an appeal of the WCIRB decision on February 6, 2006, more than thirty days after service of the WCIRB decision.<sup>27</sup> Hence, the appeal was not timely.

The regulations governing administrative appeals give the ALJ discretionary authority to extend the time for filing an appeal if the delay "was caused by the excusable neglect of the appellant or other circumstances beyond the reasonable control of the appellant."<sup>28</sup> In this case, the appellant did not request an extension of time to file its appeal, nor did it present any evidence of excusable neglect or circumstances beyond its control that prevented it from timely filing its appeal. Accordingly, the Commissioner finds that there are no grounds for granting the appellant relief from the time limits governing the filing of appeals.

The WCIRB has raised objections related to whether the initial Complaint and Request for Action were timely filed on August 25, 2005, and Sportsmobile West has argued that the WCIRB has waived those objections by not raising them prior to the initiation of the present appeal. Because the appeal of the WCIRB's December 28, 2005 decision was not timely, these arguments need not be addressed herein.

Sportsmobile West alternatively argues that the WCIRB's denial of appellant's request for information made pursuant to California Insurance Code section 11752.6 must be separately addressed in this proceeding, even if its appeal to the WCIRB was otherwise untimely. Appellant's argument is not supported by the law. California

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<sup>27</sup> The postmark on the appeal indicated that it was mailed more than thirty days after service of the WCIRB decision.

<sup>28</sup> Cal. Code of Regs., tit. 10, § 2509.49.

Insurance Code section 11752.6 subsection (c) authorizes an employer to appeal a decision denying a request for information to the Commissioner pursuant to California Insurance Code section 11753.1. Appeals under section 11753.1 must be filed within thirty days after service of the adverse decision.<sup>29</sup> Since Sportsmobile West's appeal from the WCIRB's decision denying appellant's request for records was not timely, the appeal of this issue also is time barred, and Sportsmobile West's arguments need not be substantively addressed.

**B. Appellant Timely Filed an Appeal After SCIF Did Not Respond to Appellant's Request for Reconsideration**

SCIF argues that the SCIF CRA was not timely submitted pursuant to the provisions of the ERP, and that appellant's subsequent appeal to the Commissioner was untimely. However, the law does not support SCIF's arguments. ERP, Section VIII, Rule 1, relates to the time period in which an insured must submit a request for review to the WCIRB regarding its promulgation of an employer's experience modification. The time limitations in the ERP do not apply to the present appeal, as this matter involves a dispute between Sportsmobile West and SCIF over workers' compensation premiums and pure premium rates.

SCIF's arguments concerning the timeliness of appellant's appeal are not persuasive. Pursuant to California Code of Regulations, title 10, section 2509.45 subsection (b), if an insurer fails to timely respond to an employer's request for reconsideration of the insurer's decision on the CRA, the employer may appeal the insurer's decision by filing the appeal within sixty business days of the service of the

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<sup>29</sup> Cal. Code of Regs., tit. 10, § 2509.46. The appellant is not precluded from making future requests to the WCIRB for information pursuant to Cal. Ins. Code § 11752.6.

request for reconsideration. Sportsmobile West filed its appeal on January 31, 2006, less than sixty business days after service of Sportsmobile West's December 2, 2005, request for reconsideration. As a consequence, the Commissioner finds that the appellant timely appealed SCIF's decision on the SCIF CRA.

However, while the Commissioner finds that Sportsmobile West timely filed an appeal after SCIF failed to respond to the appellant's request for reconsideration, the appeal is denied in its entirety on jurisdictional grounds as discussed below.

**C. This Adjudicatory Proceeding is Not The Proper Forum For Challenging a Pure Premium Rate Adopted By The Commissioner in His Rulemaking Capacity**

The appellant asserts that SCIF's premium rate for classification 8390 is discriminatory because its pure premium rate component is based either on faulty raw data collected by the WCIRB, or is a result of faulty WCIRB methodology. Moreover, Sportsmobile West contends that the Commissioner has jurisdiction, in this adjudicatory forum, to determine whether the pure premium rate component of SCIF's premium rate is discriminatory pursuant to California Insurance Code section 11732.5 and section 11737, subdivision (b).<sup>30</sup> The WCIRB counters these arguments by claiming "the Commissioner does not, in his adjudicatory capacity, have jurisdiction over challenges to or complaints about the pure premium rate for any classification that has been promulgated in the Commissioner's rulemaking capacity."<sup>31</sup>

The appellant's arguments are not persuasive as they appear to be based on a misunderstanding of: (1) how pure premium rates are developed by the WCIRB and approved by the Commissioner; (2) how rates are developed by an insurer, and filed with

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<sup>30</sup> Appellant's Opening Brief, p. 2; WCIRB Brief Re Jurisdiction and Timeliness, p. 1.

<sup>31</sup> WCIRB Brief Re Jurisdiction and Timeliness, p. 2.

the California Department of Insurance ("CDI"); and (3) the nature and scope of the regulatory and adjudicatory authority granted to the Commissioner under Insurance Code section 11737.

1. The Development and Approval of Pure Premium Rates

It is well established that one of the primary statutory functions of the WCIRB is to measure the cost of providing workers' compensation benefits.<sup>32</sup> In support of this function, the WCIRB collects payroll and loss information pertaining to every California workers' compensation insurance policy, examines insurance policy documents, inspects insured businesses, and performs test audits of insured employers' payrolls and insurers' audits of these payrolls.<sup>33</sup>

Workers' compensation insurance rates are related to the standard industry classifications(s) assigned to a particular business. As the designated statistical agent for the Insurance Commissioner, the WCIRB applies statistical and approved actuarial techniques to the data it collects from insurers pursuant to the USRP to develop advisory pure premium rates for each standard classification contained in Section III of the USRP.

Pure premium rates are distinct from the rates an insurer ultimately charges an employer for coverage under a workers' compensation policy as the pure premium rates do not account for administrative and other overhead costs that an insurer will incur. The pure premium rate represents the average risk of loss for a particular standard classification and are based on both actuarial studies of statewide loss and payroll trends for all industries as well as an analysis of losses and payroll for each industry assigned

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<sup>32</sup> Cal. Ins. Code § 1750.3 (a)

<sup>33</sup> Cal. Ins. Code § 1750.3 (b), (c), (d), (e) and (f).

under a particular classification. Thus, a pure premium rate is that portion of the rate which represents the loss cost per unit of exposure, including loss adjustment expense.<sup>34</sup>

The WCIRB submits a rate filing with recommended pure premium rates to the Commissioner once, and sometimes twice, each year. The WCIRB's rate filing is made available to the public on the WCIRB and CDI websites or at the CDI's offices.<sup>35</sup> After receiving the WCIRB's rate filing, the Commissioner notices public hearings that provide industry groups, insurers, individual employers and other interested persons the opportunity to appear and testify for and against the WCIRB's proposed pure premium rates for a particular standard classification pursuant to California Insurance Code section 11751.5.

Following public hearings that are typically held in the fall of each year, the Commissioner is authorized by statute to adopt, reject or revise the WCIRB's rate filing.<sup>36</sup> The rates, as approved, usually become effective on January 1, each year, and are made part of the USRP.<sup>37</sup> As part of the Commissioner's regulations governing the workers' compensation insurance system, the USRP has the same force and effect as statutes and must be applied by the Commissioner as adopted.<sup>38</sup> Accordingly, any industry or public challenges to the WCIRB's proposed pure premium rates must be made in person or in writing at the public hearings provided for under Insurance Code section § 11750 (b).

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<sup>34</sup> Cal. Ins. Code, § 11730 (f). The pure premium rate for each standard classification code reflects the amount of losses (medical and indemnity) per \$100.00 of employer payroll that an insurer can expect to pay as a result of a workplace injury.

<sup>35</sup> Cal. Ins. Code, § 11750.3 (b) and (c).

<sup>36</sup> Cal. Ins. Code, § 11750 (b); Cal. Ins. Code, § 11734 (c).

<sup>37</sup> In the event of a mid-year WCIRB rate filing, the effective date is typically July 1<sup>st</sup>.

<sup>38</sup> Cal. Code of Regs., tit. 10, § 2350; *Yamaha Corp. v. State Bd. of Equalization* (1998) 19 Cal. 4th 1, 10; e.g. *Estes v. City of Grover City*, 82 (1978) Cal.App.3d 509, 514, citing *Strumsky v. San Diego County Employees Retirement Ass'n.*, (19974) 11 Cal.3d 28, 35 n.2.

## 2. Insurer Rates and Rate Filings

Insurers may use the pure premium rates approved by the Commissioner and made part of the USRP as a basis for developing their own rates. In this event, the insurer will add on various expense load factors to the pure premium rate to account for its administrative costs.<sup>39</sup> Thus, an insurer's rate for workers' compensation insurance represents the cost of insurance per exposure base unit prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums or profit.<sup>40</sup> Alternatively, an insurer may develop its own rate structure, using its own statistical and actuarial forecasting methods. In either case, every insurer must file its rates and supplemental rate information with the Department of Insurance not later than thirty days prior to the effective date.<sup>41</sup>

## 3. The Commissioner's Regulatory and Adjudicatory Authority under Insurance Code section 11737

Insurance Code section 11737 grants the Commissioner authority to regulate workers' compensation insurance rates to the extent the Commissioner can disapprove a rate under certain defined circumstances. This section also enables the Commissioner to hold hearings when a rate is disapproved under Insurance Code section 11737 subsections (a), (b) and (c) or when the application of a rate filing is challenged under section 11737 subdivision (f). The WCIRB correctly argues, however, that Insurance

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<sup>39</sup> It is undisputed that SCIF's 2001, 2002 and 2003 rates for classification 3890 were based, in part, on the pure premium rates for classification 3890 contained in the WCIRB's 2001, 2002 and 2003 rate filings, and approved by the Commissioner. (SCIF's Exhibits 2-8.)

<sup>40</sup> (Cal. Ins. Code, § 11730 (g).)

<sup>41</sup> Cal. Ins. Code § 11735 (a). Supplemental rate information is any manual or plan of rates, classification system, rating schedule, minimum premium policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured. (Cal. Ins. Code § 11730 (j).)

Code section 11737 is directed to the regulation of the separate rate filings submitted each year by each insurer under Insurance Code section 11735, and do not refer to, nor do they have any applicability to, the pure premium rates established by the Commissioner under Insurance Code section 11750 subsection(b).<sup>42</sup>

Thus, Insurance Code section 11737 subdivisions (a), (b) and (c), authorize the Commissioner to disapprove an insurer's rates if the Commissioner determines that: (1) the insurer failed to comply with certain filing requirements; (2) the premiums charged by the insurer in the aggregate would be inadequate to cover an insurer's losses and expenses, unfairly discriminatory, or tend to create a monopoly in the market; and (3) the premiums charged by the insurer in the aggregate would, if continued in use, tend to impair or threaten the solvency of the insurer.<sup>43</sup>

Insurance Code section 11737 subdivisions (d) and (e), grant the insurer the right to an evidentiary hearing after the insurer receives notice that the Commissioner intends to disapprove the insurer's rates. Insurance Code section 11737 subdivision (d) mandates that the Commission initiate an evidentiary hearing when the Commissioner determines that the rates would be inadequate, discriminatory or would tend to create a monopoly.<sup>44</sup> On the other hand, Insurance Code section 11737 subdivision (c), allows an insurer to request an evidentiary hearing if the Commissioner initially determines that the insurer's rates tend to impair or threaten the insurer's solvency.<sup>45</sup>

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<sup>42</sup> WCIRB Brief Re Jurisdiction and Timeliness, p. 7.

<sup>43</sup> Cal. Ins. Code § 11737 (a), (b) and (c). An insurer's rates are unfairly discriminatory if "after allowing for practical limitations, price differentials fail to reflect equitably the difference in expected losses and expenses" (Cal. Ins. Code § 11732.5.)

<sup>44</sup> Insurance Code § 11737 (d).

<sup>45</sup> Insurance Code § 11737 (e). Following an evidentiary hearing under Insurance Code section 11737 subdivision (d) or (e), the Commissioner, in his adjudicatory role, will issue an order that may include a provision for premium adjustment for the policies in effect after the effective date of the order. (Insurance Code § 11737 subdiv. (g).)

While subdivisions (a) through (e) of Insurance Code section 11737 enable the Commissioner to initiate a review of an insurer's rate filing, subdivision (f) of Insurance Code section 11737, provides a means by which any person aggrieved by the application of a rate filing may appeal an adverse decision to the Commissioner and request a hearing. Under subdivision (f) of Insurance Code section 11737, an employer may request a review of "the manner in which the rating system has been applied in connection with the insurance afforded or offered . . ." (*Id.*)

Sportsmobile's appeal, however, does not allege that WCIRB incorrectly applied the rules of the USRP, or that State Fund misapplied its rate filing, or that the various expense load factors of State Fund's rate for classification 3890 are discriminatory. Rather, the appellant seeks to have the Commissioner review the validity of the pure premium rates the Commissioner already approved and adopted for classification 3890, and which SCIF incorporated into its base rate for this classification. While the Commissioner may determine whether a rating plan, as it exists, has been correctly applied under Insurance Code section 11737 subdivision (f), the Commissioner has no authority under this section to re-examine or question the validity of any pure premium rate approved by the Commissioner pursuant to Insurance Code section 11350 subsection (b).

The Insurance Commissioner, acting in a quasi-judicial capacity, is bound by the clear terms of the regulations and may not add to or alter those terms to accomplish a purpose that does not appear on the face of the regulation. (See *In the Matter of the Appeal of California Restaurant Ventures, et al.* (2001) ALB-WCA-00-36, pp. 8-9.) The proper forum for challenging a proposed pure premium rate for a particular

classification is at the annual public rate hearing that is held by the Commissioner prior to his adoption of the proposed pure premium rates.

Since Sportsmobile West's appeal is based upon a challenge to the pure premium rates, the appeal must be denied for lack of subject matter jurisdiction.

### **CONCLUSION**

As authorized pursuant Insurance Code section 11737, subdivision (f), and California Code of Regulations, title 10, section 2509.53, subdivision (e), the Commissioner finds that no reasonable basis for this appeal exists because Sportsmobile West's appeal of the WCIRB decision was not timely presented, and because the Commissioner does not have subject matter jurisdiction over the subject of the appeal in this forum. Therefore, the appeal is denied without an evidentiary hearing.

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## ORDER

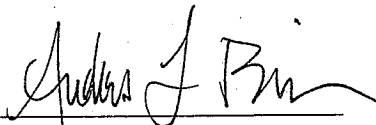
Accordingly, IT IS ORDERED that:

1. This appeal is summarily denied;
2. Judicial review of this decision may be had pursuant to California Code of Regulations, title 10, section 2509.76;
3. Any party seeking judicial review shall lodge a copy of the request for judicial review and the final order on the request for judicial review with the Administrative Hearing Bureau of the California Department of Insurance.

DATED: Jan 31, 2007

**STEVE POIZNER**  
Insurance Commissioner

By:

  
**ANDREA L. BIREN**  
Special Counsel to the Commissioner